Nos. 83-129, 83-289

In the Supreme Court of the United States

OCTOBER TERM, 1983

CLYDE HOLLOWAY, ET AL., PETITIONERS

v.

VIRGIE LEE VALLEY, ET AL.

RAPIDES PARISH SCHOOL BOARD, ET AL., PETITIONERS

v.

VIRGIE LEE VALLEY, ET AL., AND
UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court abused its discretion in closing one predominantly black and one predominantly white elementary school in southeastern Rapides Parish, Louisiana, as part of a comprehensive plan to dismantle the Parish's dual school system.

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OPINIONS BELOW

The court of appeals' opinion of March 30, 1983 (Pet. App. 1a-21a) is reported at 702 F.2d 1221. Its opinion of May 18, 1981 (Pet. App. 42a-75a) is reported at 646 F.2d 925. The district court's opinions of July 22, 1981 (Pet. App. 27a-40a) and June 6, 1980 (Pet. App. 95a-98a) are unreported. Its opinion of August 6, 1980 (Pet. App. 82a-94a) is reported at 499 F. Supp. 490.

JURISDICTION

The judgment of the court of appeals (Pet. App. 22a-23a) was entered on March 30, 1983. The petition for rehearing filed by the petitioners in No. 83-129 was denied on April 29, 1983 (*id.* at 24a-25a), and the petition for rehearing filed by the petitioners in No. 83-289 was denied on May 26, 1983 (*id.* at 26a). The petition in No. 83-129 was filed on July 26, 1983, and the petition in No. 83-289 was filed on August 22, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Prior to 1965, the public school system of Rapides Parish, Louisiana, was "classically dual, with one set of schools operated for white pupils and another for blacks" (Pet. App. 43a). On March 23, 1965, the private respondents, who represent black school children and parents in the Parish, filed this class action against the School Board, alleging that its dual system violated 42 U.S.C. 1983 and the Fourteenth Amendment. The United States intervened on August 17, 1965, pursuant to 42 U.S.C. 2000h-2.

In 1965, the district court approved a desegregation plan containing a "free transfer" provision. With minor modifications, it remained in place until 1969. From 1969 until 1971 various motions, appeals, remands and alternative plans were considered (Pet. App. 44a-46a). In 1971, the district court put into place another desegregation plan, which, with modifications, remained in effect until 1980 (*id.* at 46a).

The present proceedings were initiated in 1979, when the private respondents filed a motion for supplemental relief and the United States renewed its request for a hearing on a motion for supplemental relief it had previously filed. Following a hearing on these motions, the district court ruled that the system was still not unitary

and further relief was required (Pet. App. 82a, 95a). The court identified the metropolitan area of Alexandria and the rural southeastern area of the Parish as "the only remaining problem areas" (*id.* at 87a).

The court rejected a desegregation plan submitted by the United States and devised its own plan for desegregating these areas (Pet. App. 82a, 95a-96a).[1] Under the court's plan,[2] two elementary schools in the southeast portion of the Parish were closed: Lincoln Williams (predominantly black) and Forest Hill (predominantly white).[3] Students from these schools were by and large reassigned to schools in centrally located Lecompte, although some Lincoln Williams students were transferred to Poland School (*id.* at 87a, 91a-92a).[4]

The School Board appealed and applied for a stay pending appeal. The application was denied by the district court, the court of appeals, Justice Powell, and this Court (449 U.S. 811 (1980)).

2. The court of appeals concluded that the district court correctly applied the appropriate legal standards in finding further relief necessary (Pet. App. 58a). It also sanctioned most of the district court's desegregation plan. The court held, however, that the factual

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[1] The School Board did not submit a plan, apparently because it could not reach agreement on a specific proposal (83-289 Pet. 27), and the private respondents adopted the government's plan (Pet. App. 47a).

[2] This brief discusses only the court's plan and does not describe in detail the plan submitted to the court by the government.

[3] At the end of the 1979-1980 school year, Lincoln Williams was 92.9% black and Forest Hill was 91.7% white (Pet. App. 27a).

[4] Lecompte, the approximate center of the area affected by the desegregation plan that is disputed by petitioners, is located 9.7 miles east of Forest Hill, 9.1 miles northwest of Cheneyville (where Lincoln Williams is located), and 13.3 miles southwest of Poland (Pet. App. 29a, 75a).

findings supporting the portion of the plan involving the southeastern part of the Parish were insufficient to explain the choice of remedies there, and it remanded the case for further findings (*id.* at 65a-66a). This Court denied the School Board's petition for a writ of certiorari (455 U.S. 939 (1982)).

3. On remand, the district court ordered a hearing to permit the School Board to present additional evidence concerning desegregation in the southeastern part of the Parish. On May 21, 1981, the court granted a motion to intervene filed by the petitioners in No. 83-129, who are residents of the Forest Hill community. On June 30, 1981, the hearing ordered by the district court was held, and the court thereafter issued an opinion and final judgment on July 22, 1981, in which it adhered to its prior decision to close the Lincoln Williams and Forest Hill Schools (Pet. App. 27a-41a).

The court set forth in detail the grounds for its decision. The court explained its reasons for closing the primarily black Lincoln Williams School as follows (Pet. App. 29a-30a):

> There has been a gradual decline of student population at Cheneyville area (Cheneyville formerly had a white high school); and an almost complete exodus of white students from Lincoln Williams after the white school was integrated with Lincoln Williams in 1975. Poland is the only majority white school district accessible to Lincoln Williams. There was absolutely no likelihood that these students would attend Lincoln Williams when the whites in the Lincoln Williams district had already refused to do so. It was our finding that there was no reasonable prospect that Lincoln Williams could be integrated by clustering or pairing. Consequently we determined that Lincoln Williams must be closed.

The court then referred to the desirability of making maximum use of Lecompte schools in its desegregation plan (*id.* at 30a):

> Lecompte was centrally located, had radiating bus routes, many of which were already in operation. This would equalize the length and duration of bus routes as much as possible. Consequently we found that the assignment of all students to the Lecompte schools offered the best and the most reasonable prospect of successful integration in the area.

Finally, after noting that "[i]t was not fair to the black community nor legally proper that only identifiably black schools be closed for purposes of integration" (*id.* at 32a), the court turned to its reasons for closing Forest Hill (*id.* at 33a):

> Forest Hill is on the periphery of an area made up of Cheneyville, Forest Hill, Woodworth, LSU-A area and Lecompte * * *. Lecompte, on the other hand, is in the center. This was recognized by all these communities when they organized a consolidated school district for the purpose of constructing Rapides High School and locating that school in Lecompte. High School students from the Forest Hill area have been bussing [*sic*] voluntarily to Lecompete since the 1966-67 school year. It is certain that seventh and eighth grade students must attend the schools in Lecompte because of the excessive distance involved in assigning Cheneyville students to any other location * * *. Since the Forest Hill students are concentrated in the immediate Forest Hill area and on the road between Forest Hill and Lecompte the bussing [*sic*] burden on them would be minimal. The burden would be further minimized by the fact that Forest Hill grades 9-12 have been bussing [*sic*] to Lecompte previously and that grades 7-8 must also be assigned there. The elementary students would simply get on busses [*sic*] already loaded with their

> older brothers and sisters. Under these circumstances we found that the evidence as well as the law dictated that all Forest Hill students should be assigned to the schools in Lecompte * * *.

The court rejected all of the alternative proposals that had been presented to it, including a suggestion from the petitioners in No. 83-129 that Lincoln Williams and Forest Hill remain open as racially identifiable K-3 schools (Pet. App. 34a-35a)[5] and proposals from the School Board that involved the busing of blacks into Forest Hill (*id.* at 35a-36a).

4. A divided panel of the court of appeals affirmed. The majority concluded that the district court's decision to close the Lincoln Williams and Forest Hill Schools and to assign their students to the Lecompte schools was a reasonable exercise of its remedial authority (Pet. App. 8a, 15a). In the majority's view, "of all the proposals offered, [the district court's] plan can best be expected to achieve the mandated conversion to a unitary system" (*id.* at 15a).

Chief Judge Clark dissented. He was of the view that the district court had not complied with the court of appeals' 1981 mandate because it failed to consider the "'full range of mitigating, equitable circumstances'" before "reinstat[ing] the 'harsh remedy' of 'closing a facility built and maintained at the expense of local taxpayers'" (Pet. App. 17a).

ARGUMENT

The court of appeals did not err in affirming the district court's order to close the Lincoln Williams and Forest Hill Schools as part of its comprehensive plan for dismantling the dual school system in Rapides Parish. In an opinion on which we rely (Pet. App. 1a-15a),

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[5] The private respondents' principal proposal was that Forest Hill and Lincoln Williams remain closed. Transcript of hearing of June 30, 1981, at 7.

the court found that the district court had acted within its broad remedial authority in closing the two schools. The court of appeals' decision presents no novel legal issues. Rather, it involves only the application of settled legal principles to the facts of this case. The ruling below does not conflict with decisions of this Court or other courts of appeals and thus does not deserve further review by this Court.

1. The predicate for the only part of the district court's desegregation plan now at issue is its 1980 holding, previously affirmed by the court of appeals, that the continued maintenance of the predominantly black Lincoln Williams School in Cheneyville would prolong the existence of a dual school system in southeastern Rapides Parish. Given that ruling, some remedy was required. The issue presented by the petitions for a writ of certiorari is simply whether the district court abused its discretion in selecting a remedy that petitioners view as unnecessarily harsh. See Pet. App. 4a-5a.

The district court's plan to close Lincoln Williams and Forest Hill Schools and to reassign their students to the centrally located Lecompte area schools is a permissible exercise of its broad remedial authority. The court's plan effectively addresses the admitted need for further efforts to desegregate the schools in southeastern Rapides Parish and it does so in a manner best designed to distribute the burdens of desegregation evenly among children of both races. The plan undeniably makes efficient use of the available school facilities and does not significantly increase the amount of student transportation in this area of the Parish.[6]

[6] The petitioners in No. 83-129 assert (83-129 Pet. 11, 23) that the district court's order requires five-year-olds to take a 40-mile, two-hour bus trip. The petitioner School Board, however, makes no similar contention, and evidence supporting this

Contary to petitioners' contention (83-129 Pet. 27-32; 83-289 Pet. 25-27), the district court did not err in rejecting the other desegregation plans that had been submitted. The court considered each of those plans carefully (Pet. App. 34a-37a), and found that none of them would result in the elimination of all vestiges of the dual school system (*id.* at 34a). The court of appeals, on the basis of its own "painstaking review of the record" (*id.* at 13a), concluded (*id.* at 11a):

> None of the plans suggested by the school board or the Forest Hill intervenors adequately insure[s] a fair reconciliation of the competing interests involved. Some of the proposals would have unfairly burdened minority students. Others would in all probability have precipitated a reversion to the impermissible status quo—the perpetuation of Lincoln Williams as an essentially one-race school. None would spread equally the burden of desegregation.

It thus held that "of all the proposals offered, [the district court's] plan can best be expected to achieve the mandated conversion to a unitary system" (*id.* at 15a).[7]

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assertion does not appear in the record. See Pet. App. 13a-14a n.10.

The record does reflect that, under the court's order, the time and distance of busing for approximately 50 students living west and south of Forest Hill would be substantial. As the court of appeals indicated (Pet. App. 14a n.10), the district court, on proper motion, may wish to reconsider its assignment of these students to the Lecompte schools.

[7] In dissent, Chief Judge Clark proposed his own plan, a modified version of School Board Plan 3. Under that plan, children from predominantly black zones in the Lecompte area would be bused to Forest Hill; the Lecompte elementary school would be closed; and children from predominantly white areas in the Lecompte region would be bused to Lincoln Williams (Pet. App. 19a-20a). This plan, as modified by Judge Clark, was of course never presented to the district court. It has the drawback of closing a desegregated school (Lecompte Elementary),

The closing of a school facility over the objection of the School Board for purposes of desegregation is plainly not a measure that should often be used by courts. Here the district court was faced with the fact that 15 years of litigation in this case had failed to dismantle the dual school system in southeastern Rapides Parish. In these circumstances, the court was justified, after having first determined that other proposed measures held out little promise for meaningful desegregation of remaining one-race schools, to settle on a plan "that promises realistically to work, and promises realistically to work *now*." *Green* v. *County School Board*, 391 U.S. 430, 439 (1968); emphasis in original.

The development of a desegregation plan "is a delicate task that is aided by a sensitivity to local conditions, and the judgment is primarily the responsibility of the district judge." *Wright* v. *Council of Emporia*, 407 U.S. 451, 466 (1972). In this case, the district court found the plan under review to be the one with the best prospect of eliminating all vestiges of the dual school system, and the court of appeals concluded that the record supported that finding. Thus, this case primarily presents factual matters that, we contend, were correctly decided. This Court usually declines to review factual matters on which both the district court and court of appeals concur. See, *e.g.*, *Labor Board* v. *Waterman S.S. Co.*, 309 U.S. 206 (1940); *Allen* v. *Trust Co.*, 326 U.S. 630 (1946); *Graver Mfg. Co.* v. *Linde*, 336 U.S. 271 (1949). There is, we submit, no special

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and it assigns students on an explicitly racial basis. Most of the white students who attend Lecompte Elementary live in the area of Woodworth (*id.* at 35a), which is 11.0 miles northwest of Lecompte (*id.* at 29a). Under Judge Clark's plan, these students would be bused to Cheneyville, which is 9.1 miles southeast of Lecompte—a distance of more than 20 miles. Judge Clark's plan also is inconsistent with the district court's unchallenged finding that white students would not attend Lincoln Williams in Cheneyville (*id.* at 29a).

reason to warrant departure from that sound principle here.

2. The judgment below does not conflict with the decisions of this Court or of any other courts of appeals. None of this Court's school desegregation decisions holds or even suggests that a district court is precluded from closing school facilities as an exercise of its discretionary remedial authority where, as here, such closings are found by the court to offer the best prospect for dismantling a dual school system that has for too long been inattentive to the desegregation command.

To the contrary, in devising a remedy in a school desegregation case, a district court must seek to the extent practicable "to eliminate from the public schools all vestiges of state-imposed segregation." *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15 (1971). See also *Davis* v. *School Commissioners*, 402 U.S. 33, 37 (1971). That effort was concededly made here, and, contrary to petitioners' assertion (83-289 Pet. 15; 83-129 Pet. 12), none of this Court's decisions were, to our knowledge, violated in the district court's adoption of a plan designed to "achieve[] the greatest amount of integration with a reasonably assured prospect of success" (Pet. App. 83a).

Nor did the district court contravene any of this Court's decisions in taking "white flight" into account in developing a desegregation plan. In devising its plan, the district court found that there was "absolutely no likelihood" that white students from other communities would attend Lincoln Williams, because local white students did not attend that school when it was paired with a white school in Cheneyville in the 1970's (Pet. App. 29a). Fear of white flight may not alone be relied upon as an excuse for avoiding the use of remedial measures to uproot a dual school system. *E.g.*, *United States* v. *Scotland Neck City Board of Education*, 407 U.S. 484, 491 (1972). But this Court has never held that

the prospect of white flight should be disregarded altogether in fashioning a desegregation plan. If that prospect is sufficiently real under one plan to cause a district court to conclude—as occurred here—that community resistance to that plan would likely defeat the desegregation effort, then no decision of this Court prevents the adoption of a different plan, one better calculated to eliminate all vestiges of a dual school system through a judicious use of school closings.

The assertion of the petitioners in No. 83-129 (83-129 Pet. 20) that the court of appeals' judgment conflicts with the decisions of six other courts of appeals is patently incorrect. Four of the cited decisions[8] involve closings by school officials, and thus do not concern the authority of federal courts to close schools for desegregation purposes. *Morgan* v. *Kerrigan*, 401 F. Supp. 216 (D. Mass. 1975), aff'd, 530 F.2d 401 (1st Cir. 1976), involved school closings ordered by a federal judge, but, as the petitioners themselves recognize (83-129 Pet. 20 n.17), "no objection [was made] on appeal to [the] closing orders." *Haney* v. *County Board of Education*, 429 F.2d 364 (8th Cir. 1970), arose in an entirely different factual setting, *i.e.*, the merger of two school districts for desegregation purposes. *Haney* stands for the proposition that "decisions concerning utilization of school facilities are committed to the discretion of the school board (within constitutionally permissible limits)" (429 F.2d at 372). Nothing in that case, however, suggests that district judges may not close schools, where such closings are found by the trial court best suited, among the various alternatives available, to achieve the dismantling of a dual school system.

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[8] *Mitchell* v. *McCunney*, 651 F.2d 183 (3d Cir. 1981); *Allen* v. *Ashville City Board of Education*, 434 F.2d 902 (4th Cir. 1970); *Columbus Board of Education* v. *Pennick*, 583 F.2d 787 (6th Cir. 1978), aff'd, 443 U.S. 449 (1979); *Fitzpatrick* v. *Enid Board of Education*, 578 F.2d 858 (10th Cir. 1978).

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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